

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 02-O-12782-RAH (03-O-03510;
)	05-O-00675; 05-O-00730)
MARC ALAN BIEDERMAN)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
Member No. 68118)	
)	
A Member of the State Bar.)	

INTRODUCTION

After the filing of formal disciplinary charges against respondent Marc Alan Biederman on August 27, 2003, in case number 02-O-12782, the Honorable Robert M. Talcott referred this matter to the State Bar Court's Alternative Discipline Program (ADP)¹ before the Honorable Richard A. Honn.

Respondent contacted the State Bar of California's Lawyer Assistance Program (LAP) to assist him with his substance abuse issues. On December 4, 2003, he executed a Participation Agreement with the LAP.

On May 16, 2005, respondent submitted a declaration establishing a nexus between his substance abuse issues and his misconduct in this matter.

¹ At that time, the ADP was referred to as the Pilot Program for Respondents with Substance Abuse or Mental Health Issues.

The parties entered into a Stipulation Re Facts and Conclusions of Law in December 2005.

On December 13, 2005, the court lodged its Confidential Statement of Alternative Dispositions and Orders, the Contract and Waiver for Participation in the State Bar Court's ADP (Contract), and the parties' Stipulation Re Facts and Conclusions of Law. Respondent was accepted into the ADP December 15, 2005.

The court issued orders on October 23, 2008 and March 11, 2009, extending respondent's participation in the ADP until further order.

On November 6, 2009, the court issued an order finding that respondent has successfully completed the ADP. Thereafter, on that same date, the parties' Stipulation Re Facts and Conclusions of Law was filed, and this matter was submitted for decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this matter, respondent stipulated to culpability, in four client matters, of violations of Rules of Professional Conduct, rules 4-100(A), 4-100(B)(3) and 4-100(B)(4) (one count each) and Business and Professions Code, section 6106 (four counts). In mitigation, respondent had no prior record of discipline; suffered from severe financial stress; displayed candor or cooperation; and was remorseful. In aggravation, respondent's misconduct resulted in significant harm and involved dishonesty and trust funds.

The parties' Stipulation Re Facts and Conclusions of Law, including the court's order approving the stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. The Stipulation Re Facts and Conclusions of Law sets forth the factual findings, legal conclusions and aggravating and mitigating circumstances in this matter.

Furthermore, at the time respondent engaged in his misconduct, he was suffering from substance abuse issues, and respondent's substance abuse issues directly caused or contributed to

the misconduct which forms the basis for this proceeding. Supreme Court case law establishes that an attorney's rehabilitation from alcoholism or other substance abuse problems can be accorded significant weight if it is established that (1) the abuse was addictive in nature; (2) the abuse causally contributed to the misconduct; and (3) the attorney has undergone a meaningful and sustained period of rehabilitation. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 101; *In re Billings* (1990) 50 Cal.3d 358, 367.)

Respondent executed a Participation Agreement with the LAP on December 4, 2003, and successfully completed the LAP as of August 26, 2009.

Respondent also successfully completed the ADP. Respondent's successful completion of the ADP and the LAP qualify as clear and convincing evidence that respondent no longer suffers from the substance abuse issues which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a mitigating circumstance in this matter. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv).)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, to preserve public confidence in the legal profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

The court reviewed the parties' joint brief on discipline, which was received by the court on February 25, 2005. Thereafter, additional cases were consolidated. After reviewing the State Bar's brief on the issue of discipline, which was received by the court on June 29, 2005, and respondent's brief on the issue of discipline, which was received by the court on July 5, 2005, and considering the Standards for Attorney Sanctions for Professional Misconduct (standards)

and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances with respect to this disciplinary proceeding, and respondent's declaration regarding the nexus between his substance abuse issues and his misconduct, the court advised the parties of the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline which would be recommended if respondent was terminated from, or failed to successfully complete, the ADP.

In determining the appropriate discipline to recommend in this matter if respondent successfully completed the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. In their joint brief, the parties sought actual suspension for 60 days and until respondent made restitution if he successfully completed the ADP. In his individual brief that addressed the later-added matters, respondent recommended that he receive that same discipline. In contrast, the State Bar's revised brief recommended that respondent receive actual suspension for 90 days and until he made restitution if he successfully completed the ADP.

The court also considered standards 2.2(a) and (b) and 2.3 and the case law cited in the parties' discipline briefs, including *McKnight v. State Bar* (1991) 53 Cal.3d 1025; *Friedman v. State Bar* (1990) 50 Cal.3d 235; *Baker v. State Bar* (1989) 49 Cal.3d 804; *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280; *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. ; *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824; and *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17.

After agreeing to the discipline that the court would recommend to the Supreme Court if he successfully completed or was terminated from, or failed to successfully complete, the ADP, respondent executed the Contract to participate in the ADP; the Contract was lodged with the court; and respondent's period of participation in the ADP commenced.

Thereafter, respondent successfully participated in the ADP and, as noted above, the court has found that respondent has successfully completed both the ADP and the LAP. Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the court's Confidential Statement of Alternative Dispositions and Orders if respondent successfully completed the ADP.²

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent Marc Alan Biederman be suspended from the practice of law for two years; that execution of that suspension be stayed, and that respondent be placed on probation for five years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for the first 75 days of probation;
2. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
3. Within thirty (30) days after the effective date of discipline, respondent must contact the State Bar's Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;
4. Within ten (10) calendar days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number,

²The court will not recommend medical probation conditions as respondent has already completed LAP. Further, the court will not recommend that respondent complete Ethics School as he has done so as of June 21, 2007.

respondent must report such change in writing to both the Office of Probation and to the Membership Records Office of the State Bar;

5. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period during which these probation conditions are in effect. Under penalty of perjury, respondent must state in each report whether he has complied with the State Bar Act, the Rules of Professional Conduct and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) calendar days, that report must be submitted on the reporting date for the next calendar quarter and must cover the extended period. In addition to all quarterly reports, respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than twenty (20) calendar days before the last day of the period of probation and no later than the last day of the probation period;

6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, all inquiries of the Office of Probation which are directed to him personally or in writing relating to whether respondent is complying or has complied with the conditions of his probation;

7. Respondent must pay restitution to the following individuals (or the Client Security Fund, if appropriate) of the amount set forth below, plus 10% interest per annum, accruing from the date specified below, and provide satisfactory proof thereof to the Office of Probation:

<u>Party Owed Restitution</u>	<u>Principal Amount</u>	<u>Interest Accrual Date</u>
Robert Wolf	\$1,933.00	November 9, 2000
Shirle Jones	\$1,800.00	April 9, 2003
Josefina Botello	\$2,826.00	January 22, 2003
Saul and Lucero Viramontes	\$3,111.00	January 1, 1999

If the Client Security Fund (CSF) has reimbursed any of the above individuals for all or any portion of the principal amounts, respondent must pay restitution to CSF of the amount paid, plus applicable interest and costs. To the extent the CSF has paid only principal amounts, respondent will still be liable for interest payments to said individuals, as set forth above.

Respondent must pay the restitution set forth above at the rate of a minimum of \$200 per month.

With each written quarterly report required herein, respondent must provide to the Office of Probation satisfactory proof of all restitution payments made by him during that quarter or applicable reporting period. In addition, respondent must keep records of payments made and must make proof of payments available for inspection and copying upon the request of the Office of Probation, the Office of the Chief Trial Counsel or the State Bar Court.

To the extent that respondent has paid any restitution prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payments provided satisfactory proof of such is shown to the Office of Probation.

Failure to strictly comply with the requirements set forth above may be considered a violation of probation which could result in further discipline. Any modification of this probation condition may be made upon motion to, and approval by, the State Bar Court or by stipulation of the parties and approval by the State Bar Court.

8. Reporting requirements:

- A. If respondent possesses client funds at any time during the period covered by a required quarterly report, respondent must file with each required report a certificate from a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
respondent has maintained a bank account in a bank authorized to do

business in the State of California, at a branch located within the State of California, and that such account is designated as a “Trust Account” or “Client’s Funds Account”; and respondent has kept and maintained the following:

- i. a written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client,
 2. the date, amount, and source of all funds received on behalf of such client,
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client, and
 4. the current balance for such client;
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account,
 2. the date, amount, and client affected by each debit and credit, and
 3. the current balance in such account.
- iii. all bank statements and canceled checks for each client trust account; and
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii) above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii) above, the reason for the differences, and that respondent has maintained a written journal of securities or other properties held for a client that specifies:

1. each item of security and property held,
2. the person on whose behalf the security or property is held,
3. the date of receipt of the security or property,
4. the date of distribution of the security or property, and
5. the person to whom the security or property was distributed.

B. If respondent does not possess any client funds, property or securities during the entire period covered by a report, respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, respondent need not file the accountant's certificate described above.

C. This requirements of this condition are in addition to those set forth in rule 4-100 of the Rules of Professional Conduct of the State Bar of California.

9. These probation conditions will commence on the effective date of the Supreme Court's final disciplinary order in this proceeding.
10. At the expiration of the period of this probation if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for six (6) months will be satisfied and that suspension will be terminated.

It is further recommended that within one year after the effective date of the Supreme Court's final disciplinary order in this matter, respondent must take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243

(telephone: 319-337-1287) and provide satisfactory proof of his passage of the MPRE to the Office of Probation within said year.³

COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure of the State Bar of California (Rules of Procedure), all other documents not previously filed in this matter are ordered sealed pursuant to rule 23 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: December ____, 2009

RICHARD A. HONN
Judge of the State Bar Court

³ When ordered to take and pass the MPRE by the Supreme Court, failure to do so within the specified time results in actual suspension by the Review Department of the State Bar Court, without further hearing, until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) and (3), Rules of Procedure of the State Bar of California.